

## Structure and Governance for Foundations

1. Goals. In developing the following plan for the Foundations, the board of directors of Health Midwest has been guided by the following principles:

- Adherence to the historic mission and purposes of Health Midwest.
- Creation of two foundations with maximum opportunity for cooperation and administrative efficiency.
- Achievement and maintenance of diversity (ethnic, racial, gender, geographic, socio-economic)
- Creation of structure encouraging the making of both state specific and area-wide grants throughout the service area traditionally served by Health Midwest.
- Maintenance of local stewardship of assets to ensure first-hand knowledge of and responsiveness to community needs.
- Achievement of appropriate continuity to ensure compliance with continuing transactional obligations and knowledge of retained assets and operations.

2. Two Foundations with Mirror Governance Structures

- Two Foundations. Two separate foundations would be established, one chartered in Kansas and the existing Health Midwest entity, chartered in Missouri.
- Allocation of Assets and Liabilities. 80% of the net sales proceeds and retained cash will be allocated to the Missouri Foundation and 20% will be allocated to the Kansas Foundation, reflecting current Health Midwest operations. Retained operating entities (such as home health, hospice and mental health) and closed facilities (such as the Park Lane Medical Center and Trinity Lutheran Hospital campuses) will not be subject to allocation and will be retained by the Missouri Foundation. The existing hospital foundations will also not be subject to this allocation. These foundations will be kept separate. These existing foundations have assets of approximately \$94 million. Liabilities under the Asset Purchase Agreement (whether retained liabilities, indemnification of HCA or otherwise) will be pro-rated among the Missouri and Kansas Foundations and the existing hospital foundations. Ongoing operational obligations and liabilities of the Foundations will be pro rated among the Missouri and Kansas Foundations.
- Allocation of Expenditures (both operating expenses and grants). The Boards will target expenditures (including both grants and expenses of operations) so that 15% to 25% of total expenditures over a 3-year rolling average will be allocated to expenditures in Kansas and 75% to 85% will be allocated to expenditures in Missouri. Health Midwest has historically served the entire metropolitan community without regard to the state line. However, certain expenditures (e.g., a community-wide advertising campaign aimed at encouraging child immunization) are not easily allocable between one state or the other, and the Boards would be allowed to make a



good-faith reasonable allocation in accounting for the expenditures in each state.

- Attorney General Jurisdiction. Because a separate entity will be chartered in each state, each Attorney General will be able to assert such jurisdiction as permitted by laws of their respective states over the entity chartered in his or her respective state.
- Community Wide Boards of Directors Reflecting Health Midwest's Geographic Reach. The Boards of each Foundation will be mirrors of one another and chosen in a manner, which respects the wide reach of Health Midwest throughout the community. Mirror Boards are necessary and appropriate to ensure that community wide interests will be respected in the determination of how best to use the resources that are being created. Health Midwest is a metropolitan health care system. Maintenance of the metropolitan mission, while respecting state prerogatives through the existence of two foundations with allocation and distribution targets, is the appropriate way to preserve a metropolitan wide focus and to ensure that community wide grants, where appropriate (as with the example of a child immunization campaign referred to above), can be made regardless of the fact that there are two Foundations.
- Annual Reports. Each Foundation will report annually to its respective Attorney General, the Community Advisory Committee and the public on the operations of the Foundations and the expenditure of funds.

3. Purposes: The Foundations' purposes would be the same as the existing Health Midwest purposes, in summary, to foster the good health of the community. A full statement of the Health Midwest purposes and activities, as stated in its Articles of Incorporation, is attached as Exhibit 1.

4. Activities:

- Community Needs Assessment. The specific grants and other activities by which Health Midwest would achieve these purposes would be determined initially by a community needs assessment conducted as soon as practicable after closing. The Foundations expect to hire expert consultants with experience in conducting such assessments with respect to community health needs. Among them are likely to be researchers, medical professionals, scientists, public health officials, academics with expertise in health policy and public affairs, health care providers, and others with relevant background and experience. It is anticipated that the assessment would include significant public input including, among others:
  - Consultation with community groups
  - Consultations with local health officials, health care providers, medical professionals, academics and community and business leaders
- Restrictions in Asset Purchase Agreement. The possible activities of the Foundations will be affected by certain provisions of the Asset Purchase Agreement, specifically, Section 12.6 (which places certain non-competition restrictions on the Foundations' activities) and Schedule 12.6(c) (which sets forth a non-exclusive list of permitted activities). These are attached hereto as Exhibits 2 and 3.

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## 5. Governance

- Diversity. Because of the creation of a number of new Director positions, the nomination and election process for those positions is designed to ensure that a diverse representation is met and preserved. The Community Advisory Committee and the Boards shall promote diversity on the Boards so that the Boards generally reflect the diversity of the community served by the activities of the Foundations, including racial and ethnic, geographic, gender and socio-economic diversity. In addition, the Boards will be responsible for ensuring that the staff hired by the Foundations reflect this same diversity. As discussed more fully below, the initial boards will consist of 15 persons nominated by the Community Advisory Committee and 15 persons selected by the current HM board. No more than 12 of the existing 20 Health Midwest directors will be among the 15 selected by the current Health Midwest board. The new members selected by the current Health Midwest board to reach its full complement of 15 appointees to the transition Boards will reflect the diversity of the community served by Health Midwest and will be announced as soon as they are selected and agree to serve. These new members will take their positions upon the closing of the transaction with HCA.
- Qualification of Directors. Directors should have a willingness to serve and be able to demonstrate proven skills that would be beneficial to service on the Boards. A list of these qualification criteria is attached as Exhibit 4.
- Community Advisory Committee: The Community Advisory Committee has two primary functions: (1) to serve as the nominating committee for the Boards using the diversity criteria and director qualification criteria described above; and (2) to provide annual input to the Foundations on community health needs.
  - Membership. Mayors in the primary areas where Health Midwest operates will appoint the Community Advisory Committee. The composition of the Community Advisory Committee set forth below is based generally on the net operating revenues of the various Health Midwest entities, with special allowance made to ensure that the rural operations of Health Midwest are also represented by at least one member on the Committee. The members of the Community Advisory Committee will be appointed as follows:
    - 1 person appointed by the Mayor of Belton
    - 1 person appointed by the Mayor of Harrisonville
    - 3 persons appointed by the Mayor of Independence
    - 1 person appointed by the Mayor of Iola
    - 1 persons appointed by the Mayor/CEO of the Unified Government of Kansas City, Kansas and Wyandotte County
    - 10 persons appointed by the Mayor of Kansas City, Missouri
    - 2 persons appointed by the Mayor of Lee's Summit
    - 1 person appointed by the Mayor of Lexington



- 3 persons appointed by the Mayor of Overland Park
- Term. Community Advisory Committee members shall serve no more than three consecutive one-year terms. Community Advisory Committee members may not simultaneously serve on the Boards but may serve on the Boards at any time they are not serving on the Community Advisory Committee if nominated and elected as described herein.
- Diversity. The Mayors appointing the Community Advisory Committee are responsible for ensuring that the appointees to the Community Advisory Committee reflect the diversity goals described above.
- Structure of Boards.
  - Initial Boards Reflect Both the Need for Continuity and the Need for New Membership. The initial Boards will reflect a mix of both existing Health Midwest directors, new directors appointed by the Health Midwest Board and new directors nominated by the Community Advisory Committee. Over the next 5 years, the Health Midwest directors and Health Midwest appointees will cycle off the Boards unless they are re-nominated by the Community Advisory Committee and reelected by the Boards. This transitional continuity of leadership is critical for a number of reasons:
    - There will be a transition period where the Foundations will conclude some operations of Health Midwest and continue other operations. The Health Midwest operations will include payment or defeasance of the outstanding taxable and tax-exempt bonds, filing of final Medicare cost reports, filing of final tax returns, audits of both cost reports and tax returns, operation of health care providers and facilities not sold to HCA and retained by the Foundations (such as home health and hospice operations), sale of certain retained real estate (such as the retained Park Lane and Trinity Lutheran campuses), dealing with existing employee benefit plans, and settling other outstanding Health Midwest liabilities.
    - During this transition period, the Foundations will also be charged with ongoing post-closing issues with respect to the Asset Purchase Agreement such as indemnification, arbitration, and monitoring HCA's performance of its post-closing operating covenants (e.g., capital investment, uncompensated care and other commitments).
    - In other hospital conversions, the winding up of the activities has taken a substantial amount of time, and knowledge of the organization is critical to this activity and to the continued operation of any business units that are not sold to HCA.
    - Health Midwest's entire current staff will transfer to HCA so the institutional memory and familiarity of the Health Midwest directors will be needed during the transition.
  - Initial Boards/Term Limits. The initial Boards will consist of: (a) 15 persons



appointed by the existing Health Midwest board (no more than 12 of whom will come from the existing Health Midwest Board and the remainder of whom shall be selected to increase the diversity of the Foundation Boards); and (b) 15 persons nominated by the Community Advisory Committee and elected by the Boards. Directors nominated by the Community Advisory Committee will serve three-year terms and can be elected for up to three terms for a total of nine consecutive years. The Health Midwest directors continuing on the Foundation Boards will serve initial staggered terms of 1 to 5 years (3 serve a one-year term; 3 serve a two-year term; 3 serve a three-year term; 3 serve a four year term and 3 serve a five-year term) to serve through the transition period. Such directors can continue to serve thereafter only if they are re-nominated by the Community Advisory Committee and reelected by the Boards. Under this term structure, the Health Midwest directors will cycle off the Boards over a 5-year period as follows:

Year	HM Directors	Directors Nominated by CAC	Total Number of Directors
1	15	15	30
2	12	15	27
3	9	15	24
4	6	15	21
5	3	15	18
6	0	15	15

- o Vacancies. Vacancies will be filled by the Boards from nominations made by the Community Advisory Committee. The Committee will nominate at least 2 persons for every seat that is open. The slate will be a panel of nominees, not a slate for each seat. In other words, if there are 5 seats open and 2 nominees per vacancy, the Committee will put forth at least 10 names. The Boards can select the five Directors from among any of the 10. If a current Health Midwest director is not able to complete the initial term during the transition period, the remaining Health Midwest directors then on the Boards will elect a replacement to complete the initial transition term.

6. Timeline for Implementation and Transition. The Community Advisory Committee will be convened as soon as possible after closing once the Mayors make their appointments to the Committee. The Community Advisory Committee would be obligated to submit its nominations within 6 months after being convened. The Boards would be required to elect the new members of the initial Boards of Directors within three months after receiving the nominations. Until the new Boards are in place, there would be no grant making of any kind (unless IRS rules require otherwise), and no Executive Director could be hired except on an interim basis (although the interim Executive Director could be approved on a permanent basis



by the initial full Boards once they are installed.) Administrative staff, transitional staff and outside consultants could be hired and/or retained by the Boards as necessary to handle transitional and routine start up matters.

7. Existing Hospital Foundations. The hospital foundations would be allowed at their respective options to separate and operate independently under the following circumstances:

- Approval of the respective Attorney General with jurisdiction over the respective hospital foundation.
- Assurance that the hospital foundation will comply with the non-compete provisions in the Asset Purchase Agreement and indemnification of the Foundations for any violations thereof.
- Assumption by the hospital foundation of its pro rata share of liabilities under the Asset Purchase Agreement.
- Significant limitation of the funding of the respective hospital, which will no longer be tax-exempt and nonprofit.



**Exhibit 1: Health Midwest Purposes and Activities**

1. The corporation is organized exclusively for charitable, scientific and educational purposes, including, for such purposes, the receiving of contributions and the making of distributions to, and otherwise supporting the following organizations:

Research Medical Center  
Health Midwest Development Group  
Baptist Medical Center  
Trinity Lutheran Hospital  
Menorah Medical Center  
Medical Center of Independence, Inc.  
Lee's Summit Hospital  
The Rehabilitation Institute

provided, however, that such organizations are described in Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States Internal Revenue Law) and are exempt from taxation under Section 501(a) of the Internal Revenue code of 1986 (or the corresponding provisions of any future United States Internal Revenue Law), which purposes include, among others, the making of distributions to organizations that qualify as tax-exempt organizations under said Code, and particularly the following specific charitable, scientific and educational purposes and objects, to wit:

(a) To care for the sick and to carry on research and teaching and to foster the health of the community, and in such connection to establish, operate and maintain health care centers, hospitals, clinics, laboratories, medical office buildings, pharmacies and all manner of other facilities for the study and care of the human body or any part thereof, and the causes, effects, diagnosis, treatment and prevention of diseases, disorders, maladjustments and abnormalities of the human body;

(b) To engage in, carry on and conduct research, experiments, analysis, studies, laboratory work and all manner of scientific investigation relating to the mind or human body or any part of functioning thereof, or to the causes, effects, diagnosis, treatment and prevention of diseases, disorders, maladjustments and abnormalities of the human body;

(c) To carry on, conduct or take part in educational and training programs and courses of instruction in the field of medicine and preventive medicine and in nursing and in the regulation, diagnosis, treatment and care of diseases, disorders, maladjustments and abnormalities of the human body;

(d) To engage in, carry on and conduct any and all of the foregoing to promote or assist in promoting the good health of the community and the encouragement of providing means and facilities for such purposes.



**Exhibit 2: Section 12.6 of Asset Purchase Agreement Regarding Non-Competition****12.6 Non-Competition.**

(a) Except as permitted in this Section 12.6, during the period commencing on the Closing Date and ending on the tenth anniversary of the Closing Date, Seller agrees that it shall not and shall cause each of its Affiliates and successors not to, directly or indirectly (including by making a donation or providing other financing), (i) engage in the construction or operation of any Competing Business within the Kansas City metropolitan statistical area or a radius of 10 miles of any Facility or (ii) acquire, lease, own or be a shareholder, partner, member or equity holder of, exercise management control over, provide consulting services for, or acquire or maintain any interest in, any Competing Business that is operated or conducted within the Kansas City metropolitan statistical area or a radius of 10 miles of any Facility.

(b) Seller recognizes that the covenants in this Section 12.6, and the territorial, time and other limitations with respect thereto, are reasonable and properly required for the adequate protection of the acquisition of the Purchased Assets by Buyer, and agrees that such limitations are reasonable with respect to its activities, business and public purpose. Seller agrees and acknowledges that the violation of the covenants or agreements in this Section 12.6 would cause irreparable injury to Buyer and that the remedy at law for any violation or threatened violation thereof would be inadequate and that, in addition to whatever other remedies may be available at law or in equity, Buyer shall be entitled to temporary and permanent injunctive or other equitable relief without the necessity of proving actual damages or posting bond. The parties hereto also waive any requirement of proving actual damages in connection with the obtaining of any such injunctive or other equitable relief.

(c) Nothing herein contained shall be deemed to prevent or limit the right of Seller (i) to continue the operation of any Facility which is not sold to Buyer in the event that Buyer Closes on less than all the Facilities and Purchased Assets under circumstances described in Section 9.8, provided that Seller may not use the name Health Midwest or any derivation thereof in connection therewith, (ii) to purchase, acquire, merge or consolidate with, by any means whatsoever, any Person (or the assets of any Person) that may have a Competing Business that violates the provisions of Section 12.6(a) so long as (x) such Competing Business constitutes less than 10% of such Person's operations, (y) the principal purpose of such purchase or acquisition was not to permit Seller to operate a Competing Business in the restricted areas and (z) Seller offers Buyer the opportunity to purchase the assets that constitute the Competing Business on substantially the same economic terms as Seller acquires such assets, (iii) to invest in the capital stock or other securities of any corporation or other entity whose stock or securities are publicly owned or are regularly traded on any national securities exchange; provided, however, that Seller shall not own more than three percent (3%) of the equity interests of any corporation or other entity engaged in the activities described at Section 12.6(a); (iv) to make donations or contributions either (x) for purposes and/or activities mutually agreed by Seller and Buyer and set forth on a Schedule 12.6(c); provided that, to the extent such purposes or activities may be used to favor or provide an advantage to the Competing Business of a third party as compared to Buyer, the operations of Buyer are not discriminated against or placed at a competitive disadvantage in connection with the activities set forth on Schedule 12.6(c), or (y) in an amount not to exceed \$250,000 per organization (and its affiliates) per year, to any

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organization which is exempt from federal income tax under Section 501(c)(3) of the Code, even if such organization operates a Competing Business within the restricted area; (v) to make payments for or directly conduct or use health care programs, products, services, or property used in providing the same pursuant to exercise by Seller of the mutually agreed purposes set forth on Schedule 12.6(c); provided that, to the extent such activities may be used to favor or provide an advantage to the Competing Business of a third party as compared to Buyer, the operations of Buyer are not discriminated against or placed at a competitive disadvantage in connection with the activities set forth on Schedule 12.6(c), or (vi) continue to hold a passive equity or passive membership interest in any Joint Venture Entity if Seller is precluded by the terms of the applicable joint venture agreements and action of the other parties to the joint venture arrangement from transferring to Buyer Seller's or the applicable System Entity's interest in any such Joint Venture Entity. For purposes of subsection (vi), a passive equity or membership interest shall mean that Seller is permitted only to receive distributions from the applicable Joint Venture Entity and is not permitted to participate in financing, further investment in, operations, management or governance of the Joint Venture Entity.

(d) It is the intention of each party hereto that the provisions of this Section 12.6 shall be enforced to the fullest extent permissible under the laws and the public policies of the States of Missouri and Kansas and of any other jurisdiction in which enforcement may be sought, but that the unenforceability (or the modification to conform with such laws or public policies) of any provisions hereof shall not render unenforceable or impair the remainder of this Agreement. Accordingly, if any term or provision of this Section 12.6 shall be determined to be illegal, invalid or unenforceable, either in whole or in part, this Agreement shall be deemed amended to delete or modify, as necessary, the offending provisions and to alter the balance of this Agreement in order to render the same valid and enforceable to the fullest extent permissible as aforesaid.

(e) For purposes of this Section 12.6, the term "Competing Business" means the business of owning, operating, managing or otherwise providing services through general acute care hospitals, psychiatric hospitals, specialty hospitals, specialty outpatient facilities, surgery centers, urgent care centers, imaging centers, physician practices, rehabilitation facilities, skilled nursing practices, home health operations and other businesses that provide health care of a kind now provided by Seller and/or its Affiliates.

This Section 12.6 shall continue to apply to Seller and its successors and assigns, including if Seller is acquired by or merged with or into, or assigns any of its rights or obligations to, any other Person that owns or operates a Competing Business.



**Exhibit 3: Schedule 12.6(c) of the Asset Purchase Agreement****Regarding Permitted Activities****FOUNDATION POST-CLOSING ACTIVITIES**

The activities identified below are qualified by the text set forth in Section 12.6(c) of the Asset Purchase Agreement to which this Schedule is attached.

- 1) Ownership, operation or funding of programs for the provision of charity care to the underserved (i.e., the poor, indigent and uninsured residents of HM's region). This may include the employment of physicians and operation of indigent care clinics (modeled on e.g., K.C. Free Health Clinic, Sam Rogers, Swope Parkway) for the provision of such care.
- 2) Provision of services and programs related to pastoral counseling, pastoral services, and pastoral training and education programs.
- 3) Community outreach services that meet health care needs of the Kansas City, Missouri region (e.g., support for community health screenings; community health education programs, publications; support for vaccination and other disease prevention programs; funding provision of specialty care services to underserved communities such as rural areas or inner city poor areas).
- 4) Support of postgraduate medical education and research.
- 5) Conduct of continuing medical education seminars.
- 6) Support of medical and clinical research programs seeking to develop prevention and/or treatment products and/or services for diseases and conditions (e.g., cancer, various genetic conditions, AIDS/HIV).
- 7) Conduct of or support for transportation services and other programs which assist those needing transportation or to overcome other barriers in order to access health care services.
- 8) Support for complementary medicine programs, services and activities (such as massage therapy, holistic healing, etc.).
- 9) Conduct of and/or support for wellness, nutrition, health management and environmental health programs and services.
- 10) Support of education and training programs for physicians, nurses and medical technical professionals.
- 11) Support for emergency medical response and ambulance services.
- 12) Support for home companion/housekeeper and other social welfare programs for elderly, disabled, mentally challenged.
- 13) Support for and conduct of regional community health policy, planning and strategic



direction, including bringing together of diverse community elements (government, health care providers, health plans, consumer groups) to identify issues/problems, develop strategies/solutions and implement strategies/solutions.

- 14) Support for programs to address family violence and other similar situations leading to injury, death and mental illness.
- 15) Support for programs and services addressing oral health care needs of the community.



**Exhibit 4: Qualification Criteria for Directors**

- Directors should demonstrate expertise, education or experience in one or more of the following areas: provision or financing of health care services; public health care; asset management; investment analysis and strategy; accounting or law; business management; administration of philanthropic organizations; community involvement and development; or other demonstrated expertise determined by the Board or Community Advisory Committee to be valuable to accomplishing the mission of the Foundations;
- Directors should have a reputation for integrity and competence;
- Directors should demonstrate leadership qualities;
- Directors should demonstrate an ability to understand the general health care needs of the community and to balance various requirements of various constituencies served by, or desiring to be served by the Foundations;
- Directors should demonstrate a personal interest in and concern for the public health and welfare and a commitment to accomplishing the Foundations' overall mission, purposes and goals;
- Directors should demonstrate the willingness to devote the time necessary to fulfill Board responsibilities and regularly attend Board meetings; and
- Directors should be a resident of the area served by the Foundations.